

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BARBARA MITCHELL,

Case No. 4:05-CV-57

Plaintiff,

Hon. Richard Alan Enslen

v.

CITY OF KALAMAZOO and
COUNTY OF KALAMAZOO,

Defendants.

ORDER

/

This matter is before the Court on Defendants City of Kalamazoo and County of Kalamazoo's Motions for Summary Judgment. Also before the Court is Defendant City of Kalamazoo's Supplemental Motion for Summary Judgment and Plaintiff Barbara Mitchell's Motion to Continue Discovery pursuant to Federal Rule of Civil Procedure 56(f). The Court has reviewed the filings and finds oral argument unnecessary. W.D. MICH. LCIVR 7.2(d).

Plaintiff opposes Defendants' summary judgment motions and asserts that she needs to finish discovery before responding. Discovery is scheduled to close on February 1, 2006. Defendant City of Kalamazoo opposes Plaintiff's Motion to Continue Discovery because it considers its "motion is virtually a motion for judgment on the pleadings." (Def. City of Kalamazoo's Opp'n to Pl.'s Mot. to Continue at 2). Upon review, the Court finds that Defendant City of Kalamazoo's Motion and Supplemental Motion are properly considered as seeking summary judgment since they are titled as such and ask the Court to consider evidence beyond the pleadings. Thus, Defendant City of Kalamazoo's motions cannot be construed as seeking dismissal on the pleadings. FED. R. CIV. P. 12(b).

“[S]ummary judgment is improper if the non-movant is not afforded a sufficient opportunity for discovery.” *Abercrombie & Fitch Stores, Inc. v. American Eagle Outfitters, Inc.*, 280 F.3d 619, 627 (6th Cir. 2002) (other citations omitted). The Court observes that in support of her Motion to Continue, Plaintiff has indicated a need to depose Defendants’ employees and—at the time of the instant filing—had yet to serve written discovery requests. The Court finds that Plaintiff has made a proper and timely showing of a need for discovery under Rule 56(f). *Id.*

THEREFORE, IT IS HEREBY ORDERED that Plaintiff Barbara Mitchell’s Motion to Continue Discovery (Dkt. No. 41) is **GRANTED**.

IT IS FURTHER ORDERED that Defendant City of Kalamazoo’s Motion for Summary Judgment (Dkt. No. 20) and Supplemental Motion for Summary Judgment (Dkt. No. 27) are **DENIED WITHOUT PREJUDICE**.

IT IS FURTHER ORDER that Defendant County of Kalamazoo’s Motion for Summary Judgement (Dkt. No. 25) is **DENIED WITHOUT PREJUDICE**.

DATED in Kalamazoo, MI:
December 7, 2005

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE